

REMARKS

Claims 1-3, 6-10, 13-15, and 18-21 are pending. Claims 7, 15, and 21 have been withdrawn from consideration as being directed to a non-elected invention. Claims 1-3, 6, and 19 have been objected to because of informalities.

Claims 1, 8, and 18 have been amended to further define the invention over the art of record.

Claims 1, 8, and 18 stand rejected under 35 U.S.C. §102(b) as being anticipated by Widner (U.S. Design Patent No. 273,661). Widner teaches a bottle that is similar in its appearance to a conventional portable gasoline container. The bottle has a generally rectangular shaped body with a planar base, generally upright walls extending from the planar base, and a top having a planar portion and a slanted portion. A handle is formed in the planar portion and an opening/mouth is formed in the slanted portion. As best shown in Fig. 3 of the Widner patent, the mouth and the base do not extend along parallel planes. As such, the bottle fails to anticipate the chilling device recited in claim 1, which calls for a mouth to be formed along a plane that is parallel to the plane of the base of the chilling device.

Claim 8 has been amended to further define the interior area of the cover to have a total volume that is at least ten percent larger than the volume of the hollow interior of the body. To the extent that the cap for the mouth of the bottle described by Widner constitutes a "cover", the cap clearly does not provide a volume that is at least ten percent larger than the internal volume of the bottle. As set forth in the application, the present invention is designed to be used as a chilling device whereby fluid, such as water, can be filled to a maximum fill level of a container and then a cover can then be used to close the container. The construction of the chilling device allows the liquid to expand into the cover when the liquid is frozen. It is well known that water expands approximately ten percent when it is frozen. See <http://www.iapws.org/faq1/freeze.htm>. In this regard, the present invention provides a cover having an interior volume that is large enough to accommodate freezing of water that was filled to the maximum fill level of the container. One skilled in the art would readily appreciate that the cap for the Widner bottle is not sized to

accommodate the expansion of water that was filled to the maximum fill level defined by the mouth of the bottle. As such, the Widner bottle fails to anticipate that recited claim 8.

Claim 18 is directed to a container that has, in part, a handle that has an upright orientation that is orthogonal to the base of the container. The bottle described by Widner teaches a horizontally oriented handle. As such, the Widner bottle fails to teach or suggest that recited in claim 18.

Claims 1-3, 6, 8-10, 13, 14 and 18-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Vinarsky (U.S. Pat. No. 5,597,087) in view of Yurkewicz et al. (U.S. Pat. No. 5,975,369). Vinarsky discloses a sports bottle having an angled opening, which according to the reference allows for “nearly complete bottle filling with the bottle tilted, such as when filling from a drinking fountain with low water jet.” Abstract. The bottle is described as having a hook for hanging and a straw (outlet means 27) extending through the cap for the angled opening, “which allows someone (not shown) to take liquid directly from the bottle 10 and into the mouth without removing the cap or spilling, even while exercising.” Col. 3, ll. 4-8. As noted by the Examiner, Vinarsky fails to teach a cover that is adapted to close the mouth such that liquid may only be removed from the hollow interior of the body when the cover is disengaged from the mouth. As such, the Examiner further relied upon the disclosure of Yurkewicz et al. and has suggested that it would have been obvious to one skilled in the art at the time the invention was made to have modified the device of Vinarsky to include the container cover as taught by Yurkewicz et al. in order to prevent a user from spilling liquid out of the bottle.

Additionally, in the Response to Arguments section of the outstanding office action, the Examiner has asserted that “nothing prevents one of ordinary skill in the art to replace Vinarsky’s cap 26 with Yurkewicz’s cap 10 to prevent liquid from leaking out of the bottle.”

Yurkewicz et al. teaches a container closure that includes a shell attachable to a container opening thereof. The shell has a shell opening in fluid communication with the interior volume of the container. A tip is placed on the shell and is movable between an open position and a closed position. When the tip is in an open position, fluid may be passed from the interior volume through the shell opening and ultimately through the tip. When the tip is in the closed position, fluid is prevented from passing through the tip. The reference further teaches a dust cover that may

be attached to the shell when the tip is in the closed position. One skilled in the art will appreciate that the cover cannot be attached to the shell when the tip is in the open position. More particularly, as shown in Fig. 9c of the reference, for the cover (16) to engage the shell (12), the tip (14) must be in the retracted (closed) position. The extended (open) position can be seen in Fig. 9a. In this regard, the cover does not have an interior volume that is fluidly coupled to the interior of the container. In other words, the cover can only be engaged with the shell when the tip is in the retracted and closed position, and when the tip is in such a retracted position, fluid may not escape from the interior volume of the container through the tip and into the interior volume of the cover. It will thus be appreciated, in contrast to that recited in claim 1, for example, the combination of the cover and the container body described by Yurkewicz et al. fails to permit limited expansion of liquid contained in the body into the cover. Accordingly, Yurkewicz et al. fails to teach to a cover as recited in the claims.

Additionally, to the extent that the Examiner is asserting that it would have been obvious to simply add a container cover to the bottle of Vinarsky, Applicant notes that the addition of such a cover fails to provide a cover that is adapted to close the mouth of a container in a manner that is fluidly coupled with the interior of the container. Vinarsky teaches a cover for a sports bottle having a straw extending through the cover. A cap is provided to close the exposed end of the straw, as best shown in Fig. 1 of the reference. Thus, simply adding a dust cover, as taught by Yurkewicz et al., would result in a cover that attaches to the sports bottle in a manner that encloses the capped straw within the cover in a manner similar to the enclosing of the tip within the cover as taught explicitly by Yurkewicz et al. As Yurkewicz et al. teaches that the tip must be in a closed position when the cover is engaged with the shell, one skilled in the art would recognize that the straw must be capped when the cover is engaged with the Vinarsky sports bottle. That is, Yurkewicz et al. explicitly teaches the cover, not as a fluid flow prevention device, but as a protective cover for the tip of the shell. Thus, one skilled in the art modifying the Vinarsky bottle to include a cover as described by Yurkewicz et al. would recognize the functionality of the Yurkewicz et al. cover as not performing fluid retention, but rather, performing as a protective cover for those components of the bottle that do allow or prevent the passing of fluid, i.e., the straw and its cap. Moreover, one skilled in the art would recognize that using the cover instead of the straw cap

to close the straw could result in the cover retaining the fluid that would undesirably spill out of the cover was removed, such as by a user seeking to drink from the sports bottle.

Additionally, the Examiner suggests that one skilled in the art would have been motivated to add a cover to the sports bottle of Vinarsky to prevent a user from spilling liquid out of the bottle. As described above, Vinarsky already teaches a cap for the straw for that very purpose. Thus, one skilled in the art would not have been motivated in the manner suggested by the Examiner. That is, one skilled in the art would have recognized that the sports bottle of Vinarsky, like that of Yurkewicz et al., already included means to prevent spillage of liquid from the bottle and would not have modified it further to accomplish the same purpose.

Even assuming one skilled in the art would have been motivated, or found it obvious, to modify the sports bottle of Vinarsky to include the cover described by Yurkewicz et al., the resulting modification would fail to provide a cover that closes the mouth of a body and is fluidly coupled to the interior volume of the body such that fluid may only be removed from within the interior volume of the body when the cover is disengaged from the mouth.

Additionally, replacing Vinarsky's cap with Yurkewicz's cap does not achieve the claimed invention. Vinarsky teaches a cap with a straw passing therethrough. Thus, as explained above, fluid, e.g., water may be removed from Vinarsky's bottle without having to remove the cap. This is a critical feature of the Vinarsky bottle. That is, the Vinarsky bottle is described as a sports bottle that allows one to drink the fluid contained in the bottle without having to remove the cap. As such, replacing the Vinarsky cap with the cap of Yurkewicz et al. would simply result in a different type of "straw" being used to drink from the bottle without removing the cover.

Also, the mouth in of the Vinarsky sports bottle does not extend along the same plane as the maximum fill line. Vinarsky teaches that the maximum fill level is coplanar with the base of the bottle but not coplanar with the mouth of the bottle. More particularly, "from a practical standpoint, the vertically oriented bottle might be considered completely filled when the horizontal water level plane 36 (FIG. 1) is aligned from the then lowest fill opening edge 35, and circumferential fill mark 36m might be provided on the interior surface of the bottle to visually assist one in predetermining the maximum intended water level." Col. 3, ll. 43-48. In this regard, when the bottle is completely filled, "air would occupy the space 37 within a vertical bottle above

the horizontal water level plane 36.” Col. 3, ll. 48-50. Vinarsky further teaches that “while the bottle could be filled more by aligning the fill opening edge 35 horizontally, and then capping the bottle; this might represent an overfilled condition, since the bottle neck-cap seal would be subjected continuously to the liquid in a vertical bottle, inviting unintended leakage past the seal.” Col. 3, ll. 52-57. Thus, independent of the type of cover or cap used with the bottle of Vinarsky, the reference fails to teach or suggest the devices recited in claims 1, 8, and 18.

Further, to the extent that the Examiner is asserting that one skilled in the art would have used a dust cover, such as described by Yurkewicz et al., with the bottle of Vinarsky, the combination (or modification) still fails to achieve the claimed invention. That is, simply adding a dust cover, as taught by Yurkewicz et al., would result in a cover that attaches to the sports bottle in a manner that encloses the straw within the cover in a manner similar to the enclosing of the tip within the cover as taught explicitly by Yurkewicz et al. As Yurkewicz et al. teaches that the tip must be in a closed position when the cover is engaged with the shell, one skilled in the art would recognize that the straw must be closed when the cover is engaged with the Vinarsky sports bottle. That is, Yurkewicz et al. explicitly teaches the cover, not as a fluid flow prevention device, but as a protective cover for the tip of the shell. Thus, one skilled in the art modifying the Vinarsky bottle to include a cover as described by Yurkewicz et al. would recognize the functionality of the Yurkewicz et al. cover as not performing fluid retention, but rather, performing as a protective cover for those components of the bottle that do allow or prevent the passing of fluid, i.e., the straw and its cap. Moreover, adding the dust cover, without capping the straw, would not prevent the egress of fluid from the container. Simply, fluid could be removed from the bottle without removing the bottle cap.

As such, the claims are believed to define the invention in a manner that is neither taught nor suggested by the art of record. Therefore, it is believed that claims 1-3, 6-10, 13-15, and 18-21 are in condition for allowance. A Notice of Allowance for claims 1-3, 6-10, 13-15, and 18-21 is therefore requested.

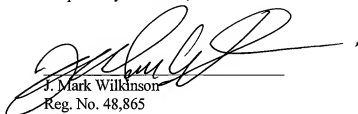
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Serial No.:10/594,942
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50-1170. The Examiner is invited to contact the undersigned by telephone if it would help to expedite matters.

Respectfully submitted,

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